Filed 4/11/19 In re P.C. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re P.C., a Person Coming Under the Juvenile Court Law.	
FRESNO COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. MATTHEW C., Defendant and Appellant.	F078205 (Super. Ct. No. 14CEJ300351-3) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Fresno County. Brian M. Arax, Judge.

Elizabeth Klippi, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County Counsel, for Plaintiff and Respondent.

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[*] Before Levy, Acting P.J., Peña, J. and DeSantos, J.

Matthew C. appeals from the juvenile court's order terminating his parental rights under Welfare and Institutions Code section 366.26[1] as to his now two-year-old daughter, P.C. He contends plaintiff and respondent, Fresno County Department of Social Services (department), failed to inquire into his Cherokee Indian ancestry in violation of the notice requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and seeks reversal of the juvenile court's order terminating his parental rights. The department concedes error. We concur the department failed to comply with the ICWA's notice requirements. Therefore, we conditionally reverse the order terminating parental rights and remand for the limited purpose of ensuring with ICWA compliance.

PROCEDURAL AND FACTUAL SUMMARY

Matthew is the biological father of P.C. who in March 2017 was removed along with her two half siblings from the custody of her mother Krista and Krista's husband Shawn because of domestic violence. Shawn is the father of P.C.'s half siblings. The department placed the children together in foster care.

Krista and Shawn completed ICWA-020 forms (Parental Notification of Indian Status) indicating they may have Cherokee Indian heritage. Matthew indicated on his ICWA-020 form that he did not have any Indian ancestry as far as he knew. The department sent notice of the proceedings to three Cherokee Bands and to the Bureau of Indian Affairs. In April 2017, the department filed the responses from the tribes and governmental agencies stating P.C. was not an Indian child.

In August 2017, following a contested dispositional hearing, the juvenile court exercised its dependency jurisdiction over the children, denied Krista reunification

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[1] Statutory references are to the Welfare and Institutions Code, unless otherwise noted.

services (§ 361.5, subd. (b)(13))[2] and ordered reunification services for Shawn and Matthew. The court found the ICWA did not apply.

In February 2018, the juvenile court terminated reunification services and set a section 366.26 hearing for June 2018. In its report for the hearing, the department recommended the juvenile court find the ICWA did not apply and terminate parental rights. The department informed the court that in May, it conducted a new ICWA inquiry with Matthew and he said he had Cherokee ancestry. However, it stated it had already reported on his Cherokee ancestry. There is no mention of his Cherokee Indian ancestry in the record.

In September 2018, following a contested section 366.26 hearing, the juvenile court terminated parental rights.

Matthew does not challenge the order terminating his parental rights. His sole contention on this appeal is that the juvenile court erred in finding that the ICWA did not apply without first providing notice to the Cherokee tribes of his possible Indian ancestry.

DISCUSSION

The ICWA provides that "[i]n any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912.) "The ICWA is designed to protect the interests of Indian children, and to promote the stability and security of Indian tribes and families. It sets forth the manner in which a tribe may obtain jurisdiction over proceedings involving the custody of an Indian child, and the manner in which a tribe may intervene in state court

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[2] We affirmed the juvenile court's dispositional order denying Krista reunification services. (*In re Krista B.* (Mar. 8, 2018, F076151) [nonpub. opn.].)

proceedings involving child custody. When the dependency court has reason to believe a child is an Indian child within the meaning of the [ICWA], notice on a prescribed form must be given to the proper tribe or to the Bureau of Indian Affairs, and the notice must be sent by registered mail, return receipt requested." (*In re Elizabeth W.* (2004) 120 Cal.App.4th 900, 906.)

A child protective agency also has an "affirmative and continuing duty" to inquire whether a dependent child is or may be an Indian Child. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 9.) This duty is triggered whenever the agency or its social worker " 'knows or has reason to know that an Indian child is or may be involved' (Cal. Rules of Court, rule 5.481(a)(4)), and obligates the social worker, as soon as practicable, to interview the child's parents, extended family members and any other person who can reasonably be expected to have information concerning the child's membership status or eligibility." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 652.)

Finally, "[t]o satisfy the notice provisions of the Act and to provide a proper record for the juvenile court and appellate courts, [a social service agency] should follow a two-step procedure. First, it should identify any possible tribal affiliations and send proper notice to those entities, return receipt requested. [Citation.] Second, [the agency] should provide to the juvenile court a copy of the notice sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's status ...." (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 739–740, fn. 4.)

In this case, Matthew informed the social worker in May 2018 he may have Cherokee Indian ancestry. There was thus a "reason to know" that P.C. may be a member of or eligible for membership in a Cherokee tribe. However, no further inquiry was made, and notice was not sent to the Cherokee tribes as required under the ICWA.

DISPOSITION

The juvenile court's order terminating Matthew's parental rights is conditionally reversed. The cause is remanded with directions to conduct such further proceedings as

are necessary to establish full compliance with the Indian Child Welfare Act (ICWA) notice requirements. If, after providing notice as required by the ICWA, no response is received from the Department of Interior, Bureau of Indian Affairs and the relevant tribes indicating P.C. is an Indian child, or if the responses received indicate P.C. is not an Indian child within the meaning of the ICWA, the order terminating parental rights shall be reinstated and such further proceedings as are appropriate shall be conducted. If any tribe determines P.C. is an Indian child within the meaning of the ICWA, the juvenile court shall proceed accordingly. In all other respects, the order terminating parental rights is affirmed.